BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 5286

WENDY RE BRODY 6207 Lake Ariana Ave. San Diego, CA 92119

Pharmacist License No. RPH 42050

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 26, 2017.

It is so ORDERED on March 27, 2017.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

Amy Gutierrez, Pharm.D. Board President

1 2 3 4 5	XAVIER BECERRA Attorney General of California GREGORY J. SALUTE Supervising Deputy Attorney General RITA M. LANE Deputy Attorney General State Bar No. 171352 600 West Broadway, Suite 1800 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266		
7 8	Telephone: (619) 738-9421 Facsimile: (619) 645-2061 Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 5286	
13	WENDY RE BRODY	OAH No. 2016100822	
14	6207 Lake Ariana Ave. San Diego, CA 92119	STIPULATED SETTLEMENT AND	
15	Pharmacist License No. RPH 42050	DISCIPLINARY ORDER	
16	Respondent.		
17	The state of the s	. ·	
18			
19	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
20	entitled proceedings that the following matters are true:		
21	<u>PARTIES</u>		
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy		
23	(Board). She brought this action solely in her official capacity and is represented in this matter by		
24	Xavier Becerra, Attorney General of the State of California, by Rita M. Lane, Deputy Attorney		
25	General.		
26	2. Respondent Wendy Re Brody (Respondent) is represented in this proceeding by		
27	attorney Jeffrey S. Kravitz, of the Kravitz Law Office, whose address is: 6747 Fair Oaks		
28	Boulevard, Carmichael, CA 95608.		
	STIPULATED SETTLEMENT (5286)		

3. On or about August 10, 1988, the Board issued Pharmacist License No. RPH 42050 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5286, and will expire on August 31, 2018, unless renewed.

JURISDICTION

- 4. Accusation No. 5286 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 16, 2016. Respondent timely filed her Notice of Defense contesting the Accusation.
- 5. A copy of Accusation No. 5286 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5286. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 9. Respondent admits the truth of each and every charge and allegation in Accusation No. 5286.
- 10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 42050 issued to Respondent Wendy Re Brody is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the

 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of Respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 5286 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in Case Number 5286, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in Case Number 5286 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in Case Number 5286 and the terms and conditions imposed thereby. It shall be Respondent's

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responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,160. Respondent shall be allowed to make payments as approved by the board.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as

 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If Respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

1. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the board.

Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new

employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California, Respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended.

until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent violates probation in any respect, the board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, Respondent's license will be fully restored.

16. Community Services Program

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 80 hours per year for the first three (3) years of probation. Within thirty (30) days of board approval thereof, Respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

17. Supervised Practice

During the period of probation, Respondent shall practice only under the supervision of a licensed pharmacist not on probation with the board. Upon and after the effective date of this decision, Respondent shall not practice pharmacy and her license shall be automatically

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suspended until a supervisor is approved by the board or its designee. The supervision shall be, as required by the board or its designee, either:

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, Respondent shall have her supervisor submit notification to the board in writing stating that the supervisor has read the decision in Case Number 5286 and is familiar with the required level of supervision as determined by the board or its designee. It shall be the Respondent's responsibility to ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If Respondent changes employment, it shall be the respondent's responsibility to ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in Case Number 5286 and is familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and her license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

18. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

19. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

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27 28 ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. Jeffrey S. Kravitz. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: <u>2/17/17</u>

Respondent

I have read and fully discussed with Respondent Wendy Re Brody the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve

its form and content.

DATED: 2/////

JEFFREY S. KRAVITZ Atforney for Respondent

<u>ENDORSEMENT</u>

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: 2-17-17

Respectfully submitted,

XAVIER BECERRA Attorney General of California GREGORY J. SALUTE

Supervising Deputy Attorney General

RITA M. LANE

Deputy Attorney General Attorneys for Complainant

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Exhibit A

Accusation No. 5286

1	Kamala D. Harris		
2	Attorney General of California GREGORY J. SALUTE		
3	Supervising Deputy Attorney General RITA M. LANE		
4	Deputy Attorney General State Bar No. 171352		
5	600 West Broadway, Suite 1800 San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2614 Facsimile: (619) 645-2061		
.8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 5286	
13	WENDY RE BRODY 6207 Lake Ariana Ave.		
14	San Diego, CA 92119	ACCUSATION	
15	Pharmacist License No. RPH 42050		
16	Respondent.		
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18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
22	2. On or about August 10, 1988, the Board of Pharmacy issued Pharmacist License		
23	Number RPH 42050 to Wendy Re Brody (Respondent). The Pharmacist License was in full force		
24	and effect at all times relevant to the charges brought herein and will expire on August 31, 2016,		
25	unless renewed.		
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(WENDY RE BRODY) ACCUSATION

JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
 - 4. Section 4300 of the Code states:
 - (a) Every license issued may be suspended or revoked.
 - 5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

6. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- (o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- 7. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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1 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices. 2 REGULATIONS 3 8. California Code of Regulations, title 16, section 1770, states: 4 5 For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business 6 and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial 7 degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner 8 consistent with the public health, safety, or welfare. **COSTS** 9 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the 10 administrative law judge to direct a licentiate found to have committed a violation or violations of 11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 12 enforcement of the case. 13 14 DRUGS Marijuana is a Schedule I controlled substance pursuant to Health and Safety Code 10. 15 section 11054, subdivision (d) and a dangerous drug as designated by Business and Professions 16 Code section 4022. 17 **FACTS** 18 On June 2, 2014, the Drug Enforcement Administration (DEA), San Diego Field 19 20 Division, executed a Federal search warrant at Respondent's residence. The DEA found 64 marijuana plants that were being cultivated inside and outside Respondent's residence and 21 22 5,106.9 gross grams of processed marijuana. The processed marijuana was found in various locations throughout Respondent's residence, including the freezer, kitchen counter, spare 23 bedroom and master bedroom. An active Tetrahydrocannabinol (THC) extraction operation was 24 25 discovered in which butane gas was being utilized to manufacture concentrated cannabis. The 26 THC extraction operation was maintained in the attached garage and on the covered patio in the 27 backyard. 111 28

Nothing in this section authorizes a certified nurse-midwife, a nurse

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- 12. Due to the presence of the active butane gas laboratory at Respondent's residence, the San Diego Fire Department and the Hazardous Material Team were called and entered the residence in order to evaluate the area for hazardous material including flammable gas. Using a Combustible Gas Meter, the Fire Department determined that there were two containers of yellow liquid that were actively emitting flammable gas. One container was found in the garage where a gas water heater and gas dryer were located, both of which are potential ignition sources for flammable gas. The Fire Department secured the area and blocked off the street in the immediately vicinity of Respondent's residence. The two containers of yellow liquid were removed from the residence and placed in the street in order to mitigate any damage from a potential explosion due to the flammable gas the yellow liquid was emitting. The Fire Department then ensured the flammable gas evaporated safely.
- 13. Respondent told DEA agents that KM lived with her at her residence and that KM's son had previously lived at the residence with them until he moved out approximately 8-10 months ago. Respondent told DEA agents that KM's son was running the THC extraction operation at her residence. Respondent admitted to the DEA agent that she knew about the THC extraction operation and that she had assisted in the marijuana cultivation.
- 14. Respondent was arrested and booked for violation of California Health and Safety Code sections 11366 (maintaining a place for sale of a controlled substance), 11379 (manufacturing of a controlled substance) and 11358 (cultivation of marijuana).
- Agreement in the case of the *United States of America v. Wendy Re Brody*, United States District Court, Southern District of California, Case No. 14cr2059-L, wherein prosecution of Respondent was deferred for a period of 60 months for the charge of managing and controlling a place, and making available for use the place, for the purpose of unlawful manufacturing and storing marijuana plants and tetrahydrocannabinols contained in hashish oil. Respondent agreed to pay a \$25,000 forfeiture and abide by the terms and conditions of her pretrial release for a period of 18 months.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

16. Respondent is subject to disciplinary action under Code section 4301 in that she engaged in unprofessional conduct when she made her residence available for use and allowed the unlawful manufacture and storage of marijuana plants and tetrahydrocannabinols at her residence, and for assisting in the cultivation of the marijuana plants. The circumstances are set forth in detail in paragraphs 11 through 15, above, and are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Possession of a Controlled Substance Without a Prescription)

17. Respondent is subject to discipline for unprofessional conduct under Code section 4301(o) in that on or about June 2, 2014, Respondent possessed a controlled substance without a prescription in violation of Code section 4060, when she kept and stored marijuana plants and tetrahydrocannabinols in her home. The circumstances are set forth in detail in paragraphs 11 through 15, above, and are incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- Revoking or suspending Pharmacist License Number RPH 42050, issued to Wendy
 Re Brody;
- 2. Ordering Wendy Re Brody to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/3/16

VIRGINIA HEROLD

Executive Officer
Board of Pharmacy

Department of Consumer Affairs

State of California Complainant